

General Terms and Conditions

Position as per: March 2019

A General Terms and Conditions of Purchase

A1 General

- A1.1** The following Terms and Conditions of Purchase of WAFIOS Tube Automation GmbH (hereinafter also "we") apply to all present and future business relationships with entrepreneurs ("Unternehmer") (Paragraph 14 German Civil Code (BGB)), public-sector legal entities and special bodies or funds under public law (hereinafter referred to as "Supplier").
- A1.2** Any general terms and conditions of the Supplier shall only apply if we have expressly consented to the application thereof.
- A1.3** Any legally significant declarations and notices that have to be given to us by the Supplier after conclusion of the contract (e.g. the setting of deadlines, reminder, a declaration of rescission or reduction in the price) are required to be in writing in order to be effective.

A2 Offer and Conclusion of Contract

- A2.1** The Supplier's offer shall strictly adhere to the query and expressly point out any variations.
- A2.2** Orders we place are revocable up until receipt of the acknowledgement of the order or – in the absence of any acknowledgement of the order – up until delivery. The Supplier is obliged to confirm our order within a deadline of 3 working days by means of an order confirmation in text form or by making delivery. A belated acceptance shall be deemed to be a new offer and requires confirmation by us.
- A2.3** We may at any time, at our reasonable discretion, demand reasonable amendments, modifications and additions of the order until such time as the goods have been delivered (in the case of work and service agreements: until acceptance). The Supplier is obligated to propose amendments and modifications which it deems to be necessary and expedient in regard to a successful fulfilment and performance of the agreement. Upon receipt of our written consent, the Supplier shall perform such amendments.
- A2.4** To the extent an amendment or modification involves an increase or decrease in costs and/or in the event deadlines can no longer be met, the Supplier is obligated to notify us of such circumstances (i.e. change in costs or delay) and to submit a supplementary offer at such time when the Supplier proposes such amendment/modification or immediately upon receipt of our amendment/modification request. The Supplier's remuneration will be adjusted in accordance with the change in costs.

A3 Prices and Payment Terms

- A3.1** The agreed prices are fixed prices. All prices are stated exclusive of value added tax, but inclusive of packaging, insurance, carriage (DDP according to Incoterms 2010) and other incidental costs. Price increases require our written consent. Packaging material shall be taken back by the supplier at our request.
- A3.2** Confirmation orders, delivery notes and invoices shall always state our order numbers, article numbers, delivery quantity and delivery address in full. Should one or more of these details be missing and thereby delay our processing in the normal course of our business, the payment periods specified in clause A3.3 shall be extended by the period of the delay. The Supplier shall be responsible for all consequences resulting from non-compliance with this obligation, unless he can prove that he is not responsible for them.
- A3.3** Unless otherwise agreed payments shall be made (i) within 14 days following receipt of the invoice and delivery with the deduction of a 2 % cash discount or (ii) within 30 days following receipt of the invoice and delivery without any deductions whatsoever. In the case of contracts for work and services (Werkverträge) the date of acceptance shall apply instead of the date of delivery. Payment shall not be deemed to be any acknowledgement of proper performance.
- A3.4** We reserve all rights to offset or retain payment provided by applicable law. In particular, we are entitled to withhold payments due as long as we are still entitled to claims from incomplete or defective services against the Supplier.

A3.5 The Supplier is not entitled to assign his claims from this contractual relationship to a third party. This does not apply in the case of monetary claims.

A4 Delivery and Delivery Dates

A4.1 Dispatch shall be at the Supplier's risk and cost (DDP according to Incoterms 2010). The goods are to be packed appropriately in compliance with the general railway and freight forwarding conditions. The Supplier shall cover the transport risks at his own expense by adequate insurance and shall submit the insurance documents to us on request. If, owing to a special agreement, the freight charges are to be borne by us, the Supplier must choose the mode of dispatch that is most favourable for us. We are under no obligation to accept any part deliveries or excess deliveries, which have not been agreed before. The place of delivery shall be the receiving point stated by us.

A4.2 Unless otherwise expressly agreed, the delivery times and periods specified by us are binding. The Supplier shall immediately inform us of any threatening or existing delay in delivery.

A4.3 Whether agreed delivery deadlines and dates have been complied with shall depend on the date the subject matter of the contract is received at the receiving point stated by us; in the case of deliveries involving installation, assembly or other services, it shall depend on the date of their acceptance.

A4.4 In the event of any delay in delivery for which the Supplier is at fault we shall be entitled to demand after prior written warning – without prejudice to further statutory claims – a contractual penalty of 0.2 % of the contract value per working day of late delivery, however a maximum of 5 % of the contract value, in each case related to the goods delivered late. This shall be without prejudice to our right to claim any further proven damage due to delay in performance. The Supplier retains the right to prove that we did not suffer any damage whatsoever or only less damage.

A4.5 The Supplier shall reimburse all additional costs incurred due to delayed delivery. The acceptance of delayed deliveries and services shall not constitute a waiver of claims for compensation. Early delivery is only permissible with our written consent and does not affect the agreed payment date. We are not obliged to accept the goods before the agreed delivery date. We may make use of general price reductions of the ordered goods by the Supplier which occur up to the scheduled delivery date.

A4.6 The delivery shall be accompanied by a delivery note stating in particular the date (issue and dispatch), contents of the delivery (article number and quantity) and our order identification (date and number). If the delivery note is missing or incomplete, we shall not be responsible for any delays in processing and payment resulting therefrom. In addition, the Supplier is obligated to draw up a supplier declaration for us upon request.

A4.7 The Supplier shall be authorized to exercise a right of retention only insofar as his counterclaim is based on the same contractual relationship or on an undisputed claim or a claim which has become final and absolute. He may only offset counterclaims that are undisputed, or counterclaims that have become final and absolute or counterclaims that are reciprocal to our claims.

A5 Acceptance, Passing of Risk, Force Majeure

A5.1 Dispatch and passing of risk shall take place in accordance with clause A4.1. The risk of accidental loss and of accidental deterioration shall pass to us upon delivery of the subject matter of the contract to the place of delivery. If acceptance is required, said acceptance shall be relevant for the passing of risk. The acceptance must be effected in writing.

A5.2 If we are unable to accept delivery as a consequence of circumstances, for which we are not responsible (stoppages due to internal or third-party industrial disputes, force majeure etc.), the risk shall not pass until the grounds for hindrance have been removed and the subject matter of the contract is available to us at the place of delivery. We are obliged to notify the Supplier without undue delay if any grounds for hindrance of this nature have occurred or it is expected that they will occur.

If, however, an extension of more than six months occurs, each contracting party shall be entitled to withdraw from the contract. In this case, too, no contractual partner may assert any claims whatsoever against the other contractual partner.

A6 Warranty Claims, Notice of Defects

- A6.1** The goods shall have the assured characteristics and comply with the specifications stated in the order, the current state of the art, the relevant statutory provisions, standards and guidelines, the safety and accident prevention regulations and the usual technical standards. In particular, the Supplier undertakes to comply with the German Product Safety Act (*Produktsicherheitsgesetz*) and all ISO, EN, DIN and VDE regulations insofar as these are applicable to the manufacture of the subject matter of performance at the respective place of manufacture. Furthermore, the Supplier undertakes to comply with all applicable regulations for placing the goods on the European market (in particular 2011/65/EU - RoHS and 1907/2006/EC - REACH) as required for EU suppliers.
- A6.2** Acceptance or approval of samples or specimens submitted shall not constitute a waiver of warranty claims on our part.
- A6.3** If the subject matter of the contract does not have the agreed quality or is defective for other reasons, our warranty claims shall be in accordance with the statutory provisions unless otherwise agreed below.
- A6.4** Our duty to inspect as part of the incoming goods inspection is limited to defects which are evidently revealed by an external examination, including examination of the delivery papers, and by our quality control by way of random sample tests (e.g. transport damage, incorrect or short deliveries). Defects shall in any event have been reported in time if we report them to the Supplier within 5 working days of discovery (and in compliance with the obligation to inspect in accordance with sentence 1).
- A6.5** If the Supplier fails to meet its obligation to subsequent performance – at our discretion – by remedying the defect (subsequent improvement) or by supplying a defect-free item (replacement delivery) within a reasonable period set by us, we shall be entitled to remedy the defect ourselves and demand reimbursement from the Supplier of the expenses required for this or a corresponding advance payment. If subsequent performance by the Supplier has failed or is unreasonable for us (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline shall be set; we shall inform the Supplier of such circumstances immediately, if possible in advance.
- A6.6** The Supplier shall bear the expenses necessary for the purpose of subsequent performance, in particular, but not exclusively, inspection, transport and return transport, travel, labour and material costs. If we have incorporated the defective item into another item or attached it to another item in accordance with its type and intended use, the Supplier shall be obliged to reimburse us for the necessary expenses for removing the defective item and installing or attaching the repaired or delivered item free of defects as part of the subsequent performance.
- A6.7** The general limitation period for warranty claims is 3 years and begins upon delivery of the goods or acceptance of the goods/services if acceptance is required. Any statutory provisions providing for longer limitation periods shall remain unaffected.

A7 Services under a contract for work and services

- A7.1** Services under a contract for work and services shall be formally accepted by us. The Supplier must notify us in writing in good time that the goods are ready for acceptance.
- A7.2** Conclusive and fictitious acceptances are excluded.

A8 Other Rights and Duties

- A8.1** We shall be entitled, after prior written notification, during normal business hours, to observe the progress of the contractual work at the Supplier's premises and to inform us about the status of the work. We are also entitled to have this right exercised by an expert third party.
- A8.2** The assignment of our orders to third parties is inadmissible without our written consent and entitles us to withdraw from the contract and to assert claims for damages.

A9 Product liability, Indemnity

- A9.1** Irrespective of the contractual warranty claims the Supplier shall, upon first demand, indemnify us from and against all claims by third parties, which are attributable to defects in the subject matter of the contract, for which the Supplier is responsible. This particularly applies to claims made on the basis of any intentional or negligent infringement of third-party intellectual property rights at the place of delivery and at the end product's place of destination known to the Supplier.
- A9.2** The Supplier shall, upon first demand, indemnify us from and against all claims based on product liability ("*Produkthaftungsansprüche*") to the extent that the cause lay within his sphere of control and organization and he is himself directly liable in relation to third parties.
- A9.3** Within the scope of his liability for damages within the meaning of clause A9.1, the Supplier shall also be obliged to reimburse any expenses arising from or in connection with a recall action carried out by us or by our customer. As far as possible and reasonable, we shall inform the Supplier of the content and scope of the recall measures to be carried out and give him the opportunity to comment. Other statutory claims shall remain unaffected.
- A9.4** The Supplier shall be under a duty to cover his risk of liability by a product liability insurance with an appropriate sum insured as a lump sum for personal injury/damage to property; if we are entitled to further claims for damages, these shall remain unaffected. Upon request, the Supplier shall provide us with proof of the insurance coverage.

A10 Intellectual Property Rights

- A10.1** The Supplier warrants that the goods delivered by him do not infringe any rights of third parties.
- A10.2** If claims are made against us by a third party in this respect, the Supplier shall be obliged to indemnify us against such claims upon our first written request; this shall not apply if the Supplier is not responsible for the infringement of third-party rights. In the event of indemnification, we shall not be entitled to enter into any agreements with the third party – without the consent of the Supplier – in particular to conclude a settlement.
- A10.3** The Supplier's obligation to indemnify shall apply to all expenses and damages necessarily incurred by us as a result of or in connection with claims asserted by a third party.

A11 Reservation of Title

- A11.1** Unless otherwise agreed by the parties, all forms of extended or prolonged reservation of title by the Supplier are excluded so any reservation of title that may validly be declared by the Supplier shall apply only to the goods delivered to us and only until said goods have been paid for.

A12 The Provision of Materials by Us

- A12.1** Materials, substances or parts (hereinafter "Materials") provided by us to the Supplier shall remain our property and may only be processed and used in accordance with instructions. The processing or transformation of the Materials shall be carried out on our behalf and we shall remain the manufacturer within the meaning of the law. The parties are in agreement that we become (co-) owners of the new or transformed object.
- A12.2** The Supplier shall store the Materials free of charge for us with the diligence of a prudent business person. The Materials may only be used to fulfill our orders. In the event of a reduction in value or loss, the Supplier must provide compensation. The Supplier shall bear the risk of loss or deterioration of the provided Materials.
- A12.3** Tools, devices and models which we make available to the Supplier or which are manufactured for contractual purposes and separately invoiced to us by the Supplier shall remain our property or become our property. They are to be marked as our property by the Supplier, kept in safe custody, protected against damage of any kind and used only for the purposes of the contract. Upon request, the Supplier shall be obliged to return these items to us in proper condition; the Supplier shall have no right of retention in this respect.

A13 Confidentiality

- A13.1** We reserve title to and the copyrights in all pictures, plans, calculations and other documents; they may not be made accessible to third parties without our express written consent. Documents of this kind must be used solely for the contractual performance and must be returned to us on written request or, at the latest, unsolicited once the contract has been dealt with. The Supplier shall have no right of retention to these documents.
- A13.2** The Supplier shall be obliged to keep such documents and information strictly confidential, to protect them against unauthorised use and inspection, to use them exclusively for the contractual performance and to return them to us after completion of the contract or if negotiations do not lead to the conclusion of a contract; the same shall also apply to all our business and trade secrets. In this case, copies made by the Supplier shall be destroyed; the only exception to this shall be storage within the scope of statutory storage and data security obligations. They may only be disclosed to third parties with our express consent. The obligation to maintain secrecy shall also apply after the execution of this contract; it shall expire if and to the extent that the manufacturing knowledge contained in the illustrations, drawings, calculations and other documents provided has become generally known.
- A13.3** The Supplier is obliged to treat the commercial and technical details relating to the contract concluded with us and all details connected with its execution as business or trade secrets. The Supplier is also obliged to maintain secrecy regarding the business relationship with us. The Supplier shall not be entitled to include our company name on his customer reference list without our express prior written consent. Exceptions require our prior written consent.
- A13.4** Both the Supplier and we shall be entitled to collect and store the data of the other party including the individual contractual relationship, whereby the applicable data protection regulations shall be observed.
- A13.5** All of the obligations under the contract must be fulfilled by the Supplier himself. A subcontractor may be engaged only with our prior written consent. In the event of the permissible assignment of such third parties, the Supplier shall obligate such third parties to maintain confidentiality in writing; upon request, the Supplier shall provide us with a copy of this confidentiality obligation.

A14 Spare parts

- A14.1** The Supplier is obliged to provide sufficient spare parts for the goods delivered to us for a period of at least 10 years after delivery.
- A14.2** If the Supplier intends to cease production of spare parts for the goods delivered to us, the Supplier shall notify us in writing immediately after the decision to cease production has been taken. Subject to clause A14.1, this decision must be made at least 12 months before production is ceased.

A15 Minimum Wage Law

- A15.1** The Supplier undertakes to comply with the provisions of the Minimum Wage Law (where applicable) or comparable regulations on the minimum wage that apply at the place of its registered office. The Supplier agrees to sign a corresponding declaration of compliance with minimum wage regulations at our request.

A16 Governing law, Place of jurisdiction

- A16.1** These General Terms and Conditions of Purchase and all legal relations between us and the Supplier are subject to German law excluding the UN Convention on Contracts for the International Sale of Goods.
- A16.2** The place of jurisdiction for all legal disputes in connection with this agreement shall be our registered office, Germany. We shall, however, be entitled to also assert our claims at the place of performance of the delivery obligation or at the Supplier's place of business.

B General Terms and Conditions of Sale

B1 General

- B1.1** These General Terms and Conditions of Sale of WAFIOS Tube Automation GmbH (hereinafter also "we") apply to all present and future business relationships with entrepreneurs (Paragraph 14 German Civil Code (BGB)), public-sector legal entities or special bodies or funds under public law (hereinafter referred to as "Customer").
- B1.2** Our Terms and Conditions of Sale shall apply exclusively; deviating or supplementary terms and conditions of the Customer shall only become part of the contract if and insofar as we have expressly agreed to their applicability. Our Terms and Conditions of Sale shall also apply if we make delivery to the Customer without reservation in the knowledge that the Customer's terms and conditions conflict with or deviate from our Terms and Conditions of Sale.
- B1.3** Any legally significant declarations and notices that have to be given to us by the Customer after conclusion of the contract (e.g. the setting of deadlines, reminder, a declaration of rescission or reduction in the price) are required to be in writing in order to be effective.

B2 Offers and Conclusion of the contract

- B2.1** Our offers are subject to change and non-binding. The order of the goods by the Customer shall be deemed a binding contractual offer. We may accept this contractual offer within ten (10) working days of its receipt. Acceptance may be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the Customer.
- B2.2** If sketches, drafts, samples or similar preliminary work are made before the order is placed, these can be invoiced to the Customer at cost price if no final order is placed. These drafts, samples etc. remain our property until full payment has been made by the Customer.

B3 Prices and Payment Terms

- B3.1** Unless otherwise agreed, prices apply ex works (EXW according to Incoterms 2010) excluding packaging; this will be invoiced separately. Value-added tax will be charged additionally at the applicable rate. Country-specific tax deductions shall be borne by the Customer.
- B3.2** Unless otherwise agreed in the order confirmation, the purchase price shall be paid within 30 days of the invoice date at the latest without discount.
- B3.3** Payment shall only be deemed to have been effected on the date of receipt thereof by us.
- B3.4** Payment by cheque or bill of exchange is only made on account of performance and does not have to be accepted on our part. The associated costs for the utilisation of the cheque or bill of exchange shall be borne by the Customer.
- B3.5** In the event of non-compliance with the terms of payment or if we become aware after conclusion of the contract that the payment claim is at risk due to lack of ability to pay on the part of the Customer, we shall be entitled to perform outstanding deliveries and services only against advance payment or security services.
- B3.6** Customer shall not be entitled to set off claims or to withhold payments on the basis of any counterclaims that it may have against us, unless such counterclaims are undisputed or have been confirmed by a competent court or with counterclaims which are reciprocal (*im Gegenseitigkeitsverhältnis*) with our claim.

B4 Delivery and Delay

- B4.1** Delivery shall be made ex our warehouse (EXW Apolda or Simonswald in accordance with Incoterms 2010) which is also the place of performance. Upon request and at the expense of the Customer, the goods will be sent to another destination (*Versendungskauf*). Unless otherwise agreed, we shall be entitled to determine the type of dispatch (in particular transport company, dispatch route, packaging) ourselves.

- B4.2** Unless expressly stated in writing as binding, details of delivery times are not binding. If shipment has been agreed upon request and expense of the Customer (*Versendungskauf*), delivery periods and delivery dates refer to the time of transfer to the carrier, forwarder or other third party commissioned with the transport.
- B4.3** If, after conclusion of the contract, the Customer requests a later delivery date than the one which had been agreed upon, payment shall be made as if the delivery was carried out on time on the original delivery date. This shall also apply if the Customer does not accept the delivery at the contractually agreed time. The costs for any necessary storage of the goods as well as other costs incurred as a result of the delay shall be charged to the Customer.
- B4.4** We are not liable for impossibility of delivery or delays in delivery, as far as they are due to force majeure (e.g. natural disasters, war, riots) or other unforeseeable events at the time of conclusion of the contract (e.g. breakdowns of all kinds, delays in transport, strikes, legitimate lockouts, lack of manpower, energy or raw materials, difficulties in obtaining necessary regulatory approvals, regulatory action or the lack of incorrect or untimely supply from upstream suppliers) which we are not responsible for. If such events make the delivery or service significantly more difficult or impossible for us and cannot be foreseen that we can provide our services within a reasonable period – at the latest within 2 months – we are entitled to withdraw from the contract. In the case of obstacles of a temporary duration, the delivery or service periods shall be extended or the delivery or service dates shall be postponed by the period of the hindrance plus a reasonable start-up period.
- B4.5** If the Customer is in default of acceptance or culpably violates other obligations to cooperate, we shall be entitled to set a reasonable grace period and, in the event that this expires without success, to withdraw from the contract and / or claim liquidated damages of 1 % per completed week of delay, but no more than 5 % of the order value due to non-performance. Both contracting parties reserve the right to prove higher or lower damages.
- B4.6** Partial deliveries are permissible if the partial delivery can be used by the Customer within the scope of the contractual purpose, the delivery of the remaining ordered goods is ensured and the Customer incurs no significant additional expenses or additional costs. We shall also be entitled to use subcontractors to fulfil our contractual obligations.
- B4.7** The termination of a sales contract is excluded; the termination of a contract for work and services is permissible in accordance with the statutory provisions. If the Customer terminates a contract for work and services before completion of the work, we shall be entitled to the statutory remuneration pursuant to § 648 BGB (German Civil Code).

The goods manufactured by us represent custom-made products which are individually tailored to each individual customer. Any work performed and unused material can therefore not or only in connection with further costs be used elsewhere for us. In the event of termination in accordance with this clause, we shall be entitled to a lump-sum remuneration claim amounting to 10 % of the agreed remuneration for the part of the work not yet performed. We reserve the right to assert a substantiated higher remuneration. The Customer reserves the right to prove that we are entitled to no remuneration at all or only a lower remuneration.

The obligation to pay the remuneration owed by the Customer for services already rendered shall remain unaffected thereby. The Customer shall not owe more than the agreed remuneration even if the remuneration claim coincides with the claim arising from this clause.

B5 Passing of Risk and Acceptance

- B5.1** The risk shall pass to the Customer at the latest when the delivery item has left the factory. This shall also apply if partial deliveries are made or if we have undertaken other services (e.g. dispatch, assembly). If dispatch or handover is delayed as a result of circumstances for which the Customer is responsible, the risk shall pass to the Customer from the day on which the goods are ready for dispatch and we have notified the Customer accordingly.
- B5.2** If the Customer is obliged to accept the goods or services, this must be done immediately on the agreed acceptance date, or alternatively within one week after notification of readiness for acceptance by us. The Customer may not refuse acceptance in case of a non-material defect.

B6 Warranty and Claims for Defects

- B6.1** If our deliveries or services prove to be defective, we are obliged to remedy the defects at our discretion by rectifying the defect or providing replacement. The expenses required for the purpose of supplementary performance, in particular transport, labor and material costs, are borne by us; this does not apply if the costs increase because the delivery item is located in a place other than the place of intended use.
- B6.2** We are entitled to make the subsequent performance owed by us dependent on the Customer paying the due purchase price. However, the Customer is entitled to retain a part of the purchase price that is appropriate in relation to the defect.
- B6.3** Any warranty shall lapse if the Customer changes the delivery item or has it altered by third parties without our consent and if this makes it impossible or unreasonably difficult to remedy the defect. In any case, the Customer has to bear the additional costs incurred by the change to remedy the defect.
- B6.4** Unless otherwise agreed, we do not assume any liability for damages that are not based on a defect. In particular, but not exclusively, these are the following cases: unsuitable or improper use, faulty assembly or commissioning by the Customer or third parties, faulty or negligent handling of the delivery item - in particular with regard to the present operating instructions, excessive strain and use of unsuitable operating materials and replacement materials.
- B6.5** Used delivery items shall be sold to the exclusion of liability for material defects. This exclusion shall not apply to claims for damages arising from liability for material defects which are based on a grossly negligent or intentional breach of duties on our part or in the event of injury to life, body or health.
- B6.6** Ordinary age or use-related signs of wear and tear are no defects and do not constitute any warranty rights of the customer. For this reason, our wearing parts are excluded from the warranty.

B7 Liability and Statute of Limitations

- B7.1** We shall be liable in accordance with the statutory provisions for any culpable breach of material contractual obligations by us, i.e. contractual obligations, the performance of which characterize the contract and which are necessary for its proper performance. For all other breaches of contract, we shall only be liable if damage has been caused intentionally or through gross negligence by one of our legal representatives, an employee or another vicarious agent.
- B7.2** Insofar as we are not responsible for intentional behaviour, we are only liable for typically occurring foreseeable damage.
- B7.3** Liability under the German Product Liability Act (*Produkthaftungsgesetz*) remains unaffected; this also applies to liability for culpable injury to life, body or health. When assuming a guarantee, we are liable in accordance with the statutory provisions.
- B7.4** Unless otherwise stipulated above, claims for damages against us for breaches of duty are excluded. Insofar as our liability is excluded and limited, this also applies to the personal liability of our legal representatives, employees and other vicarious agents.
- B7.5** Claims for damages according to the above section. 7.1 to 7.3 expire within the statutory periods. The limitation period for claims for defects according to § 438 section 1 No. 3 German Civil Code (BGB) is – except for intent and subject to section 7.6 – 12 months and starts from delivery or, if acceptance is required, from acceptance.
- B7.6** A claim for damages for breach of the obligation to supplementary performance acc. to § 437 No. 1, § 439 German Civil Code (BGB) shall only exist if during the 12-month limitation period acc. to section B7.5 both (i) the Customer demands supplementary performance, and (ii) we have violated our supplementary performance obligation.

B8 Application area for our products

Our products comply with the requirements of all member states of the European Union. Unless otherwise agreed between the parties, we assume that the products will be used within the EU.

B9 Assembly, Construction and Services

- B9.1** As far as we shall be obliged to work in the field of assembly, construction or other services within the scope of an order, we shall owe the provision of a service and not the concrete success.
- B9.2** If the completion of the construction, installation, assembly or commissioning is delayed due to circumstances for which we are not responsible, the Customer shall bear all costs for waiting time and any further travel required by our installers or assembly personnel.
- B9.3** We shall only be liable for the proper handling and installation or assembly of the delivery items or for the proper performance of the commissioned design. In case of a breach of duty for which we are responsible, we shall, at our option, remedy the defect or deliver a defect-free item/construction (subsequent performance) if we are notified of the defect in due time. If we have attempted to remedy the defect twice or made a single subsequent delivery of a defect-free item/construction and the existing defect could not be remedied as a result, the Customer may reduce the purchase price instead of remedying the defect or delivering a defect-free item or, after setting a reasonable deadline, demand cancellation of the contract concluded with us.
- B9.4** We shall not be liable for the work of our installers or our assembly personnel or other vicarious agents insofar as the work is not directly connected with the delivery and assembly and was initiated by the Customer. The same applies if errors in the design are based on incorrect information provided by the Customer or omitted cooperation obligations.
- B9.5** The Customer shall reimburse us for the costs agreed upon when placing the order for working hours, travel costs/ expenses and surcharges for overtime, night work, work on Sundays and public holidays.

B10 Retention of Title

- B10.1** Goods delivered by us shall remain our property until full fulfilment of all our claims arising from the entire business relationship with the Customer (current account reservation). The retention of title shall also extend to any products resulting from the processing, mixing or combination of our goods, whereby we shall be deemed to be the manufacturer. If the Customer processes, combines or mixes with other goods not belonging to us, we shall be entitled to co-ownership of the new product in the ratio of the value of the reserved goods to the other goods at the time of processing, combining or mixing. In the event that no such acquisition of ownership should occur with us, the Customer hereby transfers his future ownership or co-ownership of the newly created item to us as security.
- B10.2** The Customer is obliged to keep the goods delivered under retention of title at his own expense, to maintain and repair them and to insure them against fire, water damage, burglary and theft.
- B10.3** In the case of garnishment or other access by third parties to the reserved property, the Customer shall notify us immediately in writing.
- B10.4** The Customer is entitled to sell the reserved goods in the course of a proper business transaction, as long as he is not in default of payment. Pledges or transfers of ownership of the reserved goods are inadmissible. The Customer hereby already assigns the accounts receivable that arise out of the re-sale or for some other legal reason (in particular but without limitation any transfer of title to the end customer, any insurance case or any tortious act) concerning the reserved goods to us in full as security – in the case of co-ownership of the reserved goods pro rata according to the co-ownership share. We accept said assignment. We revocably authorize the Customer to collect the claims assigned to us for his account in his own name. If the Customer behaves in breach of contract – in particular if he has defaulted on the payment of a claim for payment – we may require him to disclose the assignment and to provide us with the information and documents necessary for the collection of the claim.
- B10.5** If the value of the securities to which we are entitled in accordance with the above provisions exceeds our claims by more than 10 %, we shall be obliged to release the excess value. The choice of the securities to be released shall be at our discretion.
- B10.6** In the event of breach of contract by the Customer, in particular in the event of default of payment, we shall be entitled, after setting a reasonable deadline, to reclaim the reserved goods at the expense of the Customer.

B10.7 If the law of the country, in which any delivered goods are located, does not permit or recognise a reservation of title or does so only to a limited extent, we can reserve other proprietary rights in the supplied goods. The Customer shall be under an obligation to cooperate with us in relation to all measures (e.g. registration) necessary to effect the reservation of title or to create such other rights, as may appropriately protect our interests in lieu of a reservation of title. The Customer shall cooperate in the enforcement of such rights.

B11 Information and Technical Advice

B11.1 Our information and recommendations are made without obligation and with the exclusion of any liability, unless we have expressly and in writing committed to provide them. Whether a product is also suitable for the special applications of the Customer, the Customer has to examine in own test series. Our information also does not represent a promise of the properties of our products.

B12 Confidentiality and Data Usage

B12.1 During the term of the contract and three years after its termination, the Customer undertakes to keep secret all information made available to him by us in connection with the contract and not to record it or pass it on to third parties or exploit it in any way, unless it has been expressly approved in writing beforehand or is necessary to achieve the purpose of the contract.

B12.2 This excludes information,

- which were already known to the Customer prior to the commencement of the contract negotiations or which are communicated as non-confidential by third parties, provided that these do not violate confidentiality obligations on their part;
- is independently developed by the Customer,
- is published or becomes known publicly or otherwise becomes part of the public domain through no fault of the Customer, or
- is obtained by the Customer from a third party lawfully in possession of and having the right to disclose such confidential information to the Customer.

In the latter case, the Customer shall inform us immediately prior to disclosure. Further legal obligations to confidentiality remain unaffected.

B12.3 The Customer is aware that data from business transactions, including personal data, must be stored, processed within the framework of business requirements and transmitted to third parties. The Customer agrees to this data collection and processing.

B13 Software Usage

B13.1 If software is included in the scope of delivery, the Customer shall be granted a non-exclusive right to use the delivered software including its documentation. It shall be made available for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.

B13.2 The Customer may copy, revise, translate or convert the software from the object code to the source code only to the extent permitted by law pursuant to §§ 69a et seq. of the German Copyright Act.

B13.3 The Customer undertakes not to remove or alter manufacturer's details – in particular copyright notices – without our prior express consent.

B13.4 All other rights to the software and the documentation including copies shall remain with the contractor or the software supplier. The granting of sub-licenses is not permitted.

B14 Choice of Law, Place of Jurisdiction and Place of Performance

B14.1 These General Terms and Conditions of Sale and all legal relations between us and the Customer are subject to German law excluding the UN Convention on Contracts for the International Sale of Goods.

B14.2 Exclusive place of jurisdiction and place of performance for all and any obligations between us and the Customer shall be our registered office. We shall, however, be entitled to also assert our claims at the Customer's general place of jurisdiction.